

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JUAN LUNA,  
Plaintiff,

v.

LINDA MOOD, et al.,  
Defendants.

Case No. 2:24-cv-01199-JAD-EJY

**AMENDED ORDER**

Pending before the Court is Plaintiff Juan Luna's application to proceed *in forma pauperis* ("IFP") and Civil Rights Complaint. ECF Nos. 1, 4. The IFP application is granted. The Complaint is allowed to proceed in part and is dismissed in part without prejudice and with leave to amend.

**I. Screening Standard**

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). Pro se pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation Reform Act, a federal court must dismiss a prisoner's claim, if "the allegation of poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under § 1915

1 when reviewing the adequacy of a complaint or an amended complaint. When a court dismisses a  
2 complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions  
3 as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies  
4 could not be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

5 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *Chappel v. Lab.*  
6 *Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim is proper  
7 only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that would  
8 entitle him or her to relief. *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this  
9 determination, the court takes as true all allegations of material fact stated in the complaint, and the  
10 court construes them in the light most favorable to the plaintiff. *Warshaw v. Xoma Corp.*, 74 F.3d  
11 955, 957 (9th Cir. 1996). Allegations of a pro se complainant are held to less stringent standards  
12 than formal pleadings drafted by lawyers. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the standard  
13 under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than  
14 mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic  
15 recitation of the elements of a cause of action is insufficient. *Id.*

16 Further, a reviewing court should “begin by identifying pleadings [allegations] that, because  
17 they are no more than [mere] conclusions, are not entitled to the assumption of truth.” *Ashcroft v.*  
18 *Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide the framework of a  
19 complaint, they must be supported with factual allegations.” *Id.* “When there are well-pleaded  
20 factual allegations, a court should assume their veracity and then determine whether they plausibly  
21 give rise to an entitlement to relief.” *Id.* “Determining whether a complaint states a plausible claim  
22 for relief ... [is] a context-specific task that requires the reviewing court to draw on its judicial  
23 experience and common sense.” *Id.*

24 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte*  
25 if the prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on  
26 legal conclusions that are untenable (e.g., claims against defendants who are immune from suit or  
27 claims of infringement of a legal interest which clearly does not exist), as well as claims based on  
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1 fanciful factual allegations (e.g., fantastic or delusional scenarios). *Neitzke v. Williams*, 490 U.S.  
 2 319, 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

## 3 **II. Discussion**

4 Plaintiff asserts an Eighth Amendment violation based on Defendants alleged failure to  
 5 properly address a letter so that Plaintiff “would have to go straight to the Mexico jail” because he  
 6 would not have documentation of his right to remain in the U.S. ECF No. 1 at 6. Plaintiff further  
 7 states this was discriminatory conduct on the basis of his national origin-Mexican and a violation of  
 8 the Equal Protection Clause of the Fourteenth Amendment.

9 Plaintiff fails to state an Eighth Amendment claim. Plaintiff also fails to state an Equal  
 10 Protection claim against Defendant Stutzman. Plaintiff’s Equal Protection claim against Defendant  
 11 Mood may proceed.

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)  
 13 the violation of a right secured by the Constitution or laws of the United States, and (2) that the  
 14 alleged violation was committed by a person acting under color of state law. *West v. Atkins*, 487  
 15 U.S. 42, 48 (1988). “The Eighth Amendment prohibits cruel and unusual punishment in penal  
 16 institutions.” *Wood v. Beauclair*, 692 F.3d 1041, 1045 (9th Cir. 2012). Whether a specific act  
 17 constitutes cruel and unusual punishment is measured by “the evolving standards of decency that  
 18 mark the progress of a maturing society.” *Hudson v. McMillian*, 503 U.S. 1, 8 (1992). A prison  
 19 official violates the Eighth Amendment when he acts with “deliberate indifference” to the serious  
 20 medical needs of an inmate. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). “To establish an Eighth  
 21 Amendment violation, a plaintiff must satisfy both an objective standard—that the deprivation was  
 22 serious enough to constitute cruel and unusual punishment—and a subjective standard—deliberate  
 23 indifference.” *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012). Here, Plaintiff asserts no  
 24 allegations regarding medical needs or the response to those needs. He alleges no failure to act or  
 25 actions relating to such needs. As such, Plaintiff does not state an Eighth Amendment claim.

26 To state a violation of the Equal Protection Clause, a plaintiff must show that the defendant  
 27 acted with an “intent or purpose to discriminate against the plaintiff based upon membership in a  
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1 protected class.” *Furnace v. Sullivan*, 705 F.3d 1021, 1030 (9th Cir. 2013). That is, a plaintiff must  
 2 show that the defendant acted in a “discriminatory manner” and that the discrimination was  
 3 “intentional.” *Bingham v. City of Manhattan Beach*, 341 F.3d 939, 948 (9th Cir. 2003). “Intentional  
 4 discrimination” means that a defendant acted “at least in part because of a plaintiff’s protected  
 5 status.” *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003).

6 Plaintiff alleges he asked Linda Mood to send personal documents to his home, but that due  
 7 “to deliberate indifference and discrimination and racists [sic] to Mexicans ... [she] purposely wrote  
 8 down the wrong address so [that] Plaintiff” would go directly to a Mexican jail. Plaintiff further  
 9 alleges that, through the grievance procedure he submitted a grievance to Tim Stutzman “Chief of  
 10 Unit Manager[s]” who responded to the grievance that it was Plaintiff who completed the envelope  
 11 to which the mail was to be sent.

12 To the extent Plaintiff is attempting to hold Defendant Stutzman responsible for  
 13 discriminatory conduct, Plaintiff fails to state a claim as only those individual officials who actually  
 14 engaged in unlawful conduct can be held liable. *See Monell v. Dep’t of Social Servs.*, 436 U.S. 658,  
 15 690 (1978) (rejecting concept of respondeat superior liability in § 1983 context and requiring  
 16 individual liability for constitutional violation); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)  
 17 (holding personal participation required for finding of supervisory liability based on alleged  
 18 constitutional violations). Further, failure of Defendant Stutzman to properly process Plaintiff’s  
 19 grievance does not state either a cognizable Eighth or Fourteenth Amendment claim. *Ramirez v.*  
 20 *Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (citing *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.), *cert.*  
 21 *denied*, 488 U.S. 898 (1988)). Due process is not violated simply because a defendant fails to process  
 22 grievances submitted for consideration. *See id.*; *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir.  
 23 1993) (prison grievance procedure “does not confer any substantive right upon the inmates” and thus  
 24 “does not give rise to a protected liberty interest requiring the procedural protections envisioned by  
 25 the fourteenth amendment.”). For these reasons the Court dismisses Plaintiff’s claims against  
 26 Defendant Stutzman without prejudice and with one opportunity to amend to state a viable claim.

1 With respect to Plaintiff's claims against Defendant Mood, Plaintiff alleges he was singled  
 2 out by Ms. Mood because he is Mexican. Plaintiff says the conduct was intentional in an effort to  
 3 prevent Plaintiff from obtaining documentation demonstrating he should not be sent to Mexico. The  
 4 Court could find no case law recognizing the failure to properly address an envelope, even if  
 5 intentional, being sent by a prisoner to his home—as opposed to the courts—as one stating a  
 6 constitutional claim. However, the Court finds Plaintiff alleges facts sufficient (albeit this is a close  
 7 call) to state a violation of equal protection based on a class of one. *Vill. of Willowbrook v. Olech*,  
 8 528 U.S. 562, 564 (2000) (per curiam) (facts sufficient to state a plausible “class of one” claim  
 9 include that the plaintiff was intentionally discriminated against as a member of a protected class or  
 10 was intentionally treated differently from others similarly situated, without a rational basis for the  
 11 different treatment.).

### 12 **III. Order**

13 IT IS HEREBY ORDERED that Plaintiff's application to proceed *in forma pauperis* (ECF  
 14 No.4) is GRANTED. Plaintiff is **not** required to pay an initial installment fee. Nevertheless, the  
 15 full filing fee will still be due, pursuant to 28 U.S.C. § 1915. Plaintiff is permitted to maintain this  
 16 action to conclusion without the necessity of prepayment of fees or costs or the giving of security  
 17 therefore.

18 IT IS FURTHER ORDERED that Plaintiff's Equal Protection Clause claim alleged against  
 19 Linda Mood may proceed.

20 IT IS FURTHER ORDERED that under 28 U.S.C. § 1915, the Nevada Southern Detention  
 21 Center will forward payments from the account of **JUAN LUNA, #54269048**, to the Clerk of the  
 22 United States District Court, District of Nevada, at a rate of 20% of the preceding month's deposits  
 23 (in months that the account exceeds \$10.00) until the full \$402 filing fee has been paid for this  
 24 action. The Clerk will send a copy of this Amended Order to the Finance Division of the Clerk's  
 25 Office. The Clerk will also send a copy of this Amended Order to the **Nevada Southern Detention**  
 26 **Center Accounting Supervisor, 2190 East Mesquite Ave., Pahrump, NV 89060.**

1 IT IS FURTHER ORDERED that, even if this action is dismissed, or is otherwise  
2 unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C. §1915.

3 IT IS FURTHER ORDERED that the Clerk of the Court must electronically **SERVE** a copy  
4 of this Amended Screening Order and Plaintiff's Complaint (ECF No. 1) on the Office of the  
5 Attorney General of the State of Nevada by adding the Attorney General of the State of Nevada to  
6 the docket sheet. This does not indicate acceptance of service.

7 IT IS FURTHER ORDERED that within 21 days of the entry of this Amended Screening  
8 Order, the Attorney General's Office must file a notice advising the Court and Plaintiff whether the  
9 Office accepts service on behalf of Ms. Mood. If the Attorney General's Office does not accept  
10 service, it **must** file Ms. Mood's last-known-address, under seal.

11 IT IS FURTHER ORDERED that if service cannot be accepted for Ms. Mood, Plaintiff **must**  
12 file a motion requesting issuance of a summons and specifying a full name and address for this  
13 defendant.

14 IT IS FURTHER ORDERED that if the Attorney General's Office accepts service of process  
15 for Ms. Mood, such defendant must file and serve an answer or other response to the Complaint  
16 (ECF No. 1) within 60 days from the date of this Amended Order.

17 IT IS FURTHER ORDERED that Plaintiff's claims against Defendant Stutzman are  
18 dismissed without prejudice. If he chooses to do so, Plaintiff has through and including **October**  
19 **31, 2024** to file an amended complaint to attempt to state claims against Defendant Stutzman. The  
20 amended complaint **must** state all claims Plaintiff wishes to bring against all Defendants (including  
21 those against Defendant Linda Mood) he seeks to sue. Plaintiff is advised that if he files an amended  
22 complaint, that amended complaint will supersede (essentially nullify) Plaintiff's original Complaint  
23 and nothing in the original Complaint (even the claim the Court has allowed to go forward in this  
24 Order) will continue to be an active claim if it is not asserted in an amended complaint.

1 IT IS FURTHER ORDERED that if Plaintiff does not file an amended complaint, the original  
2 Complaint will be the operative complaint and Plaintiff's claim against Defendant Linda Mood will  
3 proceed in litigation.

4 Dated this 2nd day of October, 2024.

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6 ELAYNA J. YOUCHAK  
7 UNITED STATES MAGISTRATE JUDGE  
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